

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

Case No. 08-20051

Honorable Thomas L. Ludington

v.

ANTAUREAN JONES,

Defendant.

ORDER DENYING DEFENDANT’S MOTION TO VACATE SENTENCE

On July 8, 2008, Defendant Antaurean Jones pled guilty to distribution of cocaine base in violation of 21 U.S.C. § 841. On October 21, 2008, Defendant was sentenced, as a career offender, to 175 months’ incarceration. *See* Oct. 21, 2008 Judgment 2, ECF No. 18. As a part of Defendant’s plea agreement, he waived his right to appeal or collaterally attack his conviction and sentence. *See* Plea Agreement 4–5, ECF No. 15.

In 2012, Defendant filed an application for permission to file a second or successive § 2255 motion to vacate his sentence, arguing that he was improperly sentenced as a career offender. During that appeal, Defendant “acknowledge[d] that he did not appeal or file a § 2255 motion because of the waiver contained in the plea agreement.” Mar. 1, 2013 Order from U.S. Court of Appeals – Sixth Circuit, ECF No. 19. Thus, Defendant’s motion for leave to file a second § 2255 motion was denied.

Now Defendant has returned to this Court with an original motion to vacate his sentence pursuant to 28 U.S.C. § 2255. This motion, however, is untimely and will be denied.

Aside from the fact that Defendant waived his right to appeal his sentence, his pending § 2255 motion is untimely. The Antiterrorism and Effective Death Penalty Act (AEDPA)

“contains a one-year statute of limitations period during which a § 2255 motion to vacate sentence must be filed.” *King v. United States*, 63 F. App’x 793, 795 (6th Cir. 2003); *see also* 28 U.S.C. § 2255(f). The statute of limitations begins to run from the latest of four circumstances: (1) the date on which the judgment of conviction becomes final; (2) the date on which the impediment to making a motion created by governmental action in violation of the Constitution or laws of the United States is removed; (3) the date on which the right asserted was initially recognized by the Supreme Court; or (4) the date on which the facts supporting the claim or claims presented could have been discovered through the exercise of due diligence. 28 U.S.C. § 2255(f)(1)–(4).

In this case, the latest of those dates is October 21, 2008 — the date Plaintiff’s sentence became final. Defendant alleges no government created impediment to timely filing, no newly-recognized right from a Supreme Court decision, nor any newly discovered facts which support his motion. In fact, the precise reason Defendant brings this motion was known on the day he was sentenced: the calculation of his status as a career offender. There is no excuse for Defendant’s failure to file his motion until March 2013, three-and-a-half years overdue.

Because Defendant’s claim for relief lacks merit, the Court will also deny a certificate of appealability. In order to obtain a certificate of appealability, a petitioner must make a substantial showing of the denial of a constitutional right. 28 U.S.C. § 2253(c)(2). To demonstrate this denial, the applicant is required to show that reasonable jurists could conclude that the petition should have been resolved in a different manner, or that the issues presented were adequate enough for encouragement to proceed further. *See Slack v. McDaniel*, 529 U.S. 473, 483–84 (2000). For the reasons stated above, the Court will deny Defendant a certificate of

appealability because reasonable jurists could not find this Court's assessment of Defendant's claims debatable.

Accordingly, it is **ORDERED** that Defendant's motion to vacate sentence under 28 U.S.C. 2255, ECF No. 20, is **DENIED**.

It is further **ORDERED** that the Court **DECLINES** to issue a certificate of appealability.

It is further **ORDERED** that the Court **DENIES** Defendant leave to proceed *in forma pauperis* on appeal because an appeal cannot be taken in good faith. *See* Fed. R. App. P. 24(a).

Dated: March 19, 2013

s/Thomas L. Ludington
THOMAS L. LUDINGTON
United States District Judge

PROOF OF SERVICE

The undersigned certifies that a copy of the foregoing order was served upon each attorney or party of record herein by electronic means or first class U.S. mail, and upon Antaurean Jones #41894-039, FCI P.O. Box 5000 Pekin, Illinois 61555 by first class U.S. mail on March 19, 2013.

s/Tracy A. Jacobs
TRACY A. JACOBS